

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No. 5750 of 2006

Shri Ravaso Annaya Jangam
and others ..Petitioners

vs.

Shri Nandkumar Hullaya Jangam
and others ...Respondents

Shri Vijay Killedar for petitioners.
Shri Nitin Muley i/s Shri G.S.Godbole for
respondent nos.1 to 4.

CORAM: S.C.DHARMADHIKARI J.
30th NOVEMBER, 2007

P.C.

1. This writ petition is directed against the order of the Lower Appellate Court interfering with that of the Trial Court refusing to grant interim injunction in favour of the petitioners/plaintiffs during the pendency of Reg.Civil Suit No.29 of 2005.

2. The Trial Court granted interim injunction and that order was challenged by the original defendant no.1 by filing an appeal. The case of the original defendant no.1 is that the agreement dated 14th February, 1990 has been suppressed by the present petitioners/plaintiffs. The present

petitioners/plaintiffs are not in possession of the Western Half Portion of the suit property. They are not in physical possession of the Eastern Half Portion and cultivating the said land. In so far as Western Half portion is concerned, material produced by both sides has been referred to extensively by the lower Appellate Court. The reasoning in the lower Appellate Court's order is that when 7/12 extracts have been placed on record by both sides, and when there is no explanation for the entries pertaining to certain years, then, the plaintiffs cannot take help of these entries. In such circumstances and considering the reasoning in paragraphs 13 to 15 of the impugned order, I find that the lower Appellate Court was right in interfering with the order of the Trial Court.

3. Reliance placed on provisions of Order 41 Rule 27 by Shri Killedar, at this stage, is misplaced. His submission is that in appeal before the District Judge, he has taken into consideration the documents which were produced by the appellant/original defendant for the first time. While doing so, he ought to have followed the provisions of Order 41 Rule 47 of the Code of

Civil Procedure.

4. I am unable to accept this contention because there is no question of any additional evidence being led at this stage. All that was put in issue was that agreement for sale is the crucial document., It refers to earlier position prevailing from 1975 and all these aspects have been suppressed by the petitioners/plaintiffs. Taking note of these submissions, the lower Appellate Court has allowed production of agreement for sale dated 14th February, 1990 and thereafter relied upon the contents thereof. All this was done at the prima facie stage. There is nothing objectionable to the course adopted in as much as the interlocutory proceedings caused no prejudice to the parties. Insofar as evidentiary value of the documents, after proof of contents thereof, the Trial Court will adopt appropriate course in that behalf while trying the suit. At this stage, mere production of the said document in the lower Appellate Court, causes no prejudice to the parties. This Court had ordered status quo and directed issuance of the notice to the respondents. I enquired as to whether that order can continue but Shri Mulay

states that taking advantage of the stay order the petitioners are disturbing the physical possession of the respondent/original defendant. In such circumstances, when I do not find that the order under challenge suffers from any patent illegality or perversity so as to call for interference under Article 227 of the Constitution of India, the petition deserves to be dismissed. When the petition deserves to be dismissed there is no question of continuing the statusquo order of this Court.

5. However, Shri Mulay states that the respondents/original defendants are in possession of the entire land and insofar as they are concerned they would not alienate, encumber or part with possession or create any third party rights in respect of the said land until the suit is finally heard and disposed of.

6. All contentions on merits of both sides are expressly kept open and the Trial Court should dispose of the suit uninfluenced by any observations of the lower Appellate Court so also this Court. Petition dismissed. No costs.

(S.C.DHARMADHIKARI J.)